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Office-Supreme Court, U.S.
FILED
MAY 21 1965
JOHN F. DAVIS, CLERK

No. 170

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

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Appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

Appellants appeal from a decree of the Supreme Court of Illinois sustaining the issuance of a permanent injunction against the taxpayers of Lake County, Illinois, entered December 7, 1964 and submit this statement to show that either the Supreme Court of the United States has jurisdiction of the appeal and that several substantial questions are presented or in the alternative, that a writ of certiorari should be issued to review said decree:

OPINIONS BELOW

Four opinions are involved in the instant case. The first opinion of the Supreme Court of Illinois is reported at 29 Ill. 2d 268 (193 N.E. 2d 833). The Supreme Court upheld a finding of the lower court that the amended complaint was without equity and is set forth in the Appendix hereto (App., 47a-61a). The second opinion of the Supreme Court of Illinois is reported at 31 Ill. 2d 170 (201 N.E. 2d 109), but is not printed herein. In that case, the intervenors herein, the Lake County Bar Association, sought a Writ of Prohibition against the appellants, but the Writ was denied. The third opinion, from which this appeal is taken, is reported at 31 Ill. 2d 575 (203 N.E. 2d 129), and is printed in the appendix hereto (App., 61a-65a). In the latter case, the Illinois Supreme Court sustained the issuance of a permanent injunction against the taxpayers and ruled that it had upheld the constitutionality of the Public Building Commission Act in the case of *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* II Ill. 2d 125 (142 N.E. 2d 67). The *Adamowski* case is not printed herein.

JURISDICTION

This action was brought to enjoin the transfer of certain public monies and land from the County of Lake to the Public Building Commission, alleging *inter alia,* that the Public Building Commission Act was unconstitutional or if constitutional, that the appellees had failed to comply with the provisions of the Act. The decree of the Supreme Court of Illinois was entered on December 7, 1964. A timely petition for rehearing, which had been filed on December 21, 1964, was denied by the Illinois Supreme Court on December 28, 1964 and a notice of appeal to this Court was filed in the Illinois Supreme

Court on March 26, 1965. Jurisdiction to review this decision by direct appeal is conferred upon the Supreme Court by Title 28, United States Code, Section 1257 (2), and in the alternative, the petitioner seeks to invoke the jurisdiction of this Court under Sections 1257 (3) and 2103 of Title 28. The following representative decisions sustain the jurisdiction of the Supreme Court to review the decree on direct appeal in this case: *General Oil Company* v. *Crain,* 209 U.S. 211, 228; *Wilmington & Co.* v. *Ashbrook,* 146 U.S. 279; *1st National Bank of Guthrie Center* v. *Anderson,* 269 U.S. 341, 346; *Erie Railroad Co.* v. *Purdy,* 185 U.S. 148, 152-153 and *Scott* v. *Donald,* 165 U.S. 58, 71.

The following representative decisions sustain the jurisdiction of the Supreme Court to review the decree, in the alternative, as a Petition for a Writ of Certiorari: *Bologna* v. *Morrissey,* 366 U.S. 212; *Knapp* v. *Schweitzer,* 355 U.S. 804; *Floornoy* v. *Weiner,* 321 U.S. 253, 263; *Prudential Insurance Co.* v. *Cheek,* 259 U.S. 530, 547; *Columbus & G.R. Co.* v. *Miller,* 283 U.S. 97, 98; *Cantwell* v. *Connecticut,* 309 U.S. 626, 310 U.S. 296; *Raley* v. *State of Ohio,* 360 U.S. 423-435 and *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 717.

QUESTIONS PRESENTED

The following questions were presented in the case at bar:

1. Does the state statute impair the obligations ensuing out of the contracts of a municipal corporation in contravention of Section 10 of Article 1 of the Federal Constitution?

2. Did the proceedings wherein the trial court issued a permanent injunction without an opportunity to answer

or to defend violate the due process clause of the Fourteenth Amendment to the Federal Constitution?

3. Did the issuance and discriminatory enforcement of a permanent injunction which affectively precludes all taxpayers in the county from questioning the validity of their taxes, infringe that provision of the Fourteenth Amendment to the Federal Constitution which states that no person shall be deprived of property without due process of law, as well as denying the taxpayers equal protection of the laws?

4. Were the appellants denied due process of law in contravention of the provisions of the Fourteenth Amendment by the ruling of the trial court that a judgment in a prior suit which had been dismissed for lack of jurisdiction barred subsequent litigation?

5. Were the Appellants denied due process of law and equal protection of the laws under the Federal Constitution when the Court held that a prior judgment of the said court in which some questions concerning the constitutionality of a state statute had been ruled upon precluded consideration of different points of constitutional controversy in a subsequent suit between different parties?

STATUTES INVOLVED

Public Building Commission Act (Ill. Rev. Stat., Chap. 33, Paras. 3301 *et seq.*) and applicable provisions of the Revenue Act. (Ill. Rev. Stat., Chap. 120, Paras. 675 and 716), the Conveyancing Act. (Ill. Rev. Stat., 30, Para. 157) and portions of the Illinois Constitution are set forth in the appendix hereto (App., 1a-47a).

STATEMENT

(a) The Manner In Which The Federal Questions Were Presented

This litigation was instigated to enjoin the proposed transfer of funds and to seek the return of certain public monies and lands theretofore transferred by the County of Lake hereinafter called the "County" to the Lake County Public Building Commission, hereinafter referred to as the "Commission". The complaint and the supplemental complaint alleged that the Public Building Commission Act was unconstitutional or, if constitutional, that the County and the Commission had failed to comply with the applicable provisions of the Act. The allegation that the Act in question was unconstitutional was raised by the pleadings submitted in the trial court. The trial court refused to rule on the pleadings and summarily allowed the counterclaim for an injunction filed by the appellees. However, the Illinois Supreme Court considered all of the pleadings and ruled that: "The Constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* II Ill. 2d 125, and need not be further considered. The plaintiffs additionally contend that the permanent injunction has deprived them of a full hearing guaranteed by the due process clauses of the Federal and State Constitutions and that it has deprived them of their certain remedy guaranteed by Section 19 of Article II of the State Constitution" (App., 63a). In view of these facts, the appellants assert that the rulings of the court bring the case within the purview of 28 U.S.C. 1257 (2).

(b) The Material Facts Of The Case

The Public Building Commission Act was purportedly adopted in July, 1955 by the Illinois General Assembly.

Shortly thereafter, the States Attorney of Cook County brought a *quo warranto* proceedings to challenge the constitutionality of the Act. The defendants therein (the Public Building Commission of Chicago) tested the sufficiency of the complaint by a motion to strike, which the lower court allowed and dismissed the cause. The Illinois Supreme Court on March 20, 1957 found that the Act was "not subject to any of the constitutional objections raised", except that the leases executed by a municipality with a commission would create a municipal indebtedness within the definition and limitations of Section 12 of Article IX of the Illinois Constitution and therefore the Act violates the Constitution requirement that the principal debt of a municipal corporation must be paid within twenty years. The legislature still had not amended this portion of the statute at the time of this litigation.

In 1956, the Board of Supervisors of Lake County adopted a resolution whereby the Board agreed that if the taxpayers were to eliminate the offices of township tax collector, the additional county revenue would be used to reduce the county tax levy. The taxpayers eliminated the office of township tax collector in 1956. In 1958, the taxpayers of Lake County defeated a referendum calling for the issuance of general obligation bonds for the purpose of erecting a new court house.

Pursuant to the terms of the Act in question, the County conveyed fee simple title to certain public lands to the Commission on February 6, 1961. On August 4, 1961, the Illinois Legislature amended the Act in question and the Conveyancing Act (Ill. Rev. Stat. Chap. 30, Para. 157) (App., 17a and 43a) to permit conveyances between municipalities providing the conveyance contains a reverter clause, and further amended the Act by adding a new paragraph 3314.1 (App., 20a-23a) to provide for interim financing.

On January 7, 1963 the appellant filed a class action on behalf of all Lake County taxpayers alleging that the levy of certain taxes for the years 1957 through 1961 were illegal. The trial court allowed a motion to dismiss, ruling that a declaratory judgment was not the proper remedy since the litigation involved taxes and should properly be before the County Court, which then had exclusive jurisdiction over tax matters (App., 35a). Pursuant to leave of court, ar amended complaint in equity was filed. On May 8, 1963, the trial court dismissed the matter on the grounds that the complaint was without equity, *i.e.* certain necessary allegations which would give jurisdiction to a court of equity had been omitted. The trial court refused to grant leave to amend the complaint and the appellants appealed to the Illinois Supreme Court, who affirmed the decision by stating that "The trial court was completely correct in his finding that the amended complaint was without equity" (App., 61a). A timely petition to rehear was filed and denied on November 26, 1963.

The same day, some four hours prior to the wire service announcement of the denial of the petition to rehear and quite by coincidence, the appellants filed a new taxpayers class action. The allegations in the new action was based on the earlier decision which pointed out wherein the former amended complaint had been defective. The essence of the relief sought was the restoration of public funds granted to the Commission by the County, the recovery of title to public lands transferred by the County to the Commission, a finding that the Public Building Commission Act was unconstitutional or in the alternative, a finding of noncompliance with the valid provisions of the Act, a finding that the entire tax levies for corporate purposes since 1957 are illegal and void and for an accounting. The complaint also contained allegations re-

garding fraud, irreparable injury, the fact that the illegal taxes now created a cloud upon title, allegations which the Illinois Supreme Court has indicated were previously missing and necessary to invoke the jurisdiction of the court (App., 65a-86a). The new complaint also alleged that the taxpayers had attempted to utilize the applicable provisions of the Revenue Act, (Ill. Rev. Stat. 1961, Chap. 120, paras. 675 and 716—App., 35a-41a), as suggested by the Illinois Supreme Court, but they had proven inadequate, since the taxes for the year 1962 had not been paid under protest and that the time for filing written objections had expired. It was also pointed out that under Illinois case law, each new tax year was a new and separate cause of action and that a new tax year had now intervened. The new complaint also asserted that the Illinois Constitution had now been amended by deleting Article 6, Section 18 thereof, giving the Circuit Courts original jurisdiction in proceedings for the collection of taxes and assessments (App., 35a). The appellees filed a motion to dismiss said complaint.

The Lake County Bar Association, hereinafter referred to as the "Association", then sought an original writ of prohibition to prevent the circuit court from exercising jurisdiction over the case. The writ was denied. (*People* v. *Circuit Court of Lake County,* 31 Ill. 2d 170).

During the pendency of the litigation involving the writ, which lasted over five months, an anonymous threat was made on the life of the named appellant to either withdraw the suit or face the consequences (R. 121).

Over the objection of the appellants, the Association was permitted to intervene. The appellees withdrew their motion to dismiss and joined with the intervenors in filing an answer to the complaint and filing a counter-claim

seeking an injunction on the grounds that the new complaint was vexatious and harrassing. The appellants filed a reply to the answer of the appellees, and filed a motion to dismiss the counter-claim. Over the objections of the appellees, the appellants obtained a court order to take the depositions of certain members of the Commission and the revenue bond consultant. Based upon the information discovered in the examination of the records of the Commission and the depositions, the appellants prepared a supplemental complaint and obtained a substitute complainant in view of the threat on the life of the named taxpayer. By one of the counts in the supplemental complaint, the appellants sought a mandamus to compel the levy of the tax required by the Public Building Commission Act to be levied (App. 96a-97a) in view of the fact that the County, had by resolution, abated the said tax and the appellants also requested a trial by jury as to that Count.

On August 8, 1964, the appellants served notice that on August 13, 1964 they would appear and request leave to file a supplemental complaint to substitute certain complaining parties and to request a summary judgment as to Count III of the complaint on the grounds that the answer to the complaint admitted the deed to the public lands did not contain the reverter clause required by law (R., 163 and 186).

On August 13, 1964, pursuant to said notice counsel appeared, but the trial court refused to hear any argument on the motions upon which the notice had been served. Instead, the court directed appellant's counsel to argue his motion to strike the counter claim. This counsel advised the court that he had not received notice, as required by the court rules, that the motion to dismiss the appellees' counter claim would be argued and therefore

he was not prepared to argue the question. Counsel urged that the court hear argument on those motions of the appellants which had been set for that date. The trial court ordered appellant's counsel to argue the motion to dismiss and upon completion of the argument, signed an order denying the motion to dismiss and each of the motions filed by the appellants without argument or hearing on any of those other motions. The court, without giving appellants an opportunity to answer the counter-complaint immediately signed a decree permanently restraining the taxpayers of Lake County from further prosecution of this case "and from the institution of vexatious or harassing litigation of any issues raised and decided or governed in principle by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d 268" (R., 169-170). Appellants filed a motion to rehear which the trial court struck on the ground that the appellants had failed to file a certificate showing service of notice that had in fact been made upon opposing counsel pursuant to Illinois Supreme Court 5 (Ill. Rev. St., Chap. 110, Para. 5).

An appeal was perfected to the Illinois Supreme Court. The Supreme Court allowed the supplemental complaint to be made a part of the record on appeal, and affirmed the issuance of the permanent injunction. Upon timely petition to rehear, the opinion was modified and it is from this modified opinion that this appeal is taken or in the alternative, that the Writ of Certiorari is sought.

THE QUESTIONS ARE SUBSTANTIAL

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 1257 (2). The appellants questioned the validity of the Public Building Commission Act enacted by the Illinois Legisla-

ture on the grounds that the Act was repugnant to the Constitution of the United States. The Illinois Supreme Court upheld the validity of the Act.

On October 10, 1956, the County adopted a resolution which provided that if the office of township collector were to be eliminated at an election to be held in November, 1956, the resultant saving would be used to reduce the tax burden of the taxpayers of Lake County. Acting in reliance upon this commitment, the electorate eliminated the office at the 1956 election.

The appellants alleged that the 1956 resolution was a contractual promise of the County and that the accumulation of public funds was contrary to the aforementioned resolution and therefore, that the acceptance of these funds and lands by the commission sanctions a statute impairing the obligation of contract. While the Illinois Supreme Court in its first opinion (App., 59a), seemed to indicate that these allegations were meritorious, it stated that since the theory was not pursued by argument and citation of authority, it was waived. This theory was then set forth in the complaint and supplemental complaint in addition to other Federal and State constitutional questions. The Illinois Supreme Court in the instant case, recognized that several constitutional questions were presented but stated that they had upheld the constitutionality of the Act in a prior decision and it "need not be further considered". (App. 63a). A cursory examination of the complaint and Supplemental Complaint (App., 65a-102a) clearly show that other Federal Constitutional questions were also raised and the constitutionality also sustained. Thus, it appears that this Honorable Court has jurisdiction to hear the matter by appeal pursuant to 28 U.S.C. 1257 (2), since the Illinois Court has clearly sustained the Constitutionality of the statute in question.

In its opinion (App., 61a) in the first *Bowman* case, the Illinois Supreme Court ruled that the appellants had failed to state a cause of action in equity and affirmed that the "amended complaint was without equity". In a later opinion (App., 61a-65a), the court sustained the issuance of the injunction which precludes the appellants from proceeding in their case, which is at issue and ready for trial, on the grounds that the issues raised and decided or governed in principal in the second case were identical to those issues raised and decided in the first case (App., pp. 62a-63a). The only issue raised and decided in the first *Bowman* case was that the complaint failed to state a cause of action.

In upholding the issuance of the injunction, the Illinois Supreme Court upholds the prior dismissal and is giving effect to an Act which the appellants have alleged as being repugnant to the Federal Constitution. In *General Oil Co.* v. *Crain,* 209 U.S. 211, the state court had dismissed a suit for want of jurisdiction and this Court held that it had jurisdiction of the matter since an allegation had been made that a state statute violated the Federal Constitution, saying at page 228: "It being then the right of a party to be protected against a law which violates a constitutional right, whether by its terms or in the manner of its enforcement, it is manifest that a decision is reviewable by this court. *Wilmington & Co.* v. *Ashbrook,* 146 U.S. 279". Further, in *First National Bank of Guthrie Center* v. *Anderson,* 269 U.S. 341, at page 346 this Court stated: "Whether a pleading sets up a sufficient right of action of defense, grounded on the Constitution or the law of the United States, is necessarily a question of federal law; and where a case coming from a state court presents that question, this court must determine for itself the sufficiency of the allegations displaying the right or de-

fense is not concluded by the view taken of them by the state court. (Citations)"

The Illinois Supreme Court stated in its last opinion that the constitutionality of the statute in question had been upheld in another case (*Adamowski* v. *Public Building Commission*, Ill. 2d 125) *"and need not be further considered"* (emphasis supplied). In *Erie Railroad Co.* v. *Purdy*, 185 U.S. 148, this Court at page 153 said: "So, if the highest court of the State, by its final judgment, sustains the validity of a state enactment drawn in question there as repugnant to the constitution, treaties or laws of the United States, or denies a right, privilege or immunity specially set up or claimed in that court for the first time under the Constitution or any treaty, statute or authority exercised under the United States, this court could review that judgment, although no Federal question was distinctly raised or insisted upon in the trial court".

The appellants have made sufficient allegations in both the complaint and the supplemental complaint to show that the statute in question is repugnant to the Federal constitution, and the State Supreme Court upheld the validity of the Act.

REASONS FOR GRANTING THE WRIT

Having established sufficient grounds for the direct jurisdiction of this Court, the appellants contend in the balance of the questions, that the decree below violates the provisions of the 14th Amendment to the Federal Constitution, and therefore, that in the alternative, there is reason for this Court to issue a Writ of Certiorari in this cause. The second question arises from the fact that on August 13, 1964, the trial court refused to hear argument of the appellants on any of the motions pending

before the court, except the motion of the appellants to dismiss the counterclaim of the appellees. Counsel for the appellants was forced to argue the motion even though he advised the trial court that he was not prepared to do so, since he had not received any notice of the motion as required by the local court rules. The trial court denied the motion to dismiss and immediately *without a hearing,* without the introduction of any testimony or any evidence, or *without an opportunity to defend or answer* the allegations of the counterclaim, entered a *permanent* injunction which enjoins the taxpayers of Lake County from proceeding with the trial of a case which was now at issue. To cite case law in support of the proposition that the issuance of a permanent injunction without a hearing or opportunity to be heard is a violation of the due process clause of the Fourteenth Amendment would be a work of supererogation. (See *Willner* v. *Committee On Character,* 373, U.S. 96; 103-106; *Goldsmith* v. *Board of Tax Appeals,* 270 U.S. 117, 123; *Morgan* v. *United States,* 304 U.S. 1, 18-19 and *Saunders* v. *Shaw,* 244 U.S. 317, 319).

The lack of opportunity to answer or defend was brought to the attention of the Illinois Supreme Court in the briefs and oral argument and the violations of the State and Federal Constitutions were exhaustively argued.

In response, the Illinois Supreme Court stated that "the record is entirely silent as to their reasons for having failed to file an answer to the counterclaim". (App., 63a). The record is silent because the appellants were not given the opportunity to answer. Having denied appellants motion to dismiss the counterclaim, the trial court summarily entered its decree without opportunity for the appellants to deny the allegations of fact, to answer the charges made, to set forth its affirmative defenses, or to

be heard and have their day in court. Therefore, the appellants submit that the answer to the second question should be in the affirmative and that this Court should find that the appellants were denied due process of law.

Turning to the third question, this Court will note that the injunction prohibits each and every taxpayer of Lake County from raising "any issue raised or decided or *governed in principle* by the Supreme Court of the State of Illinois in *Bowman* v. *County of Lake,* 29 Ill. 2d, 268 (emphasis supplied) (App., 62a-63a). The appellants contend that this decree is too broad and subjects the taxpayers to possible contempt of court charges in the event a taxpayer inadvertently raises a issue in a tax objection which was raised or decided of *"governed in principle"* in the prior case. What does "governed in principle" mean? The original *Bowman* case merely decided that the complaint did not state a cause of action. The appellants aver that the decree denies them due process of law in that they risk violation of the injunction in any attempt to file any tax objections in the future, In *Hodge* v. *Muscatine County,* 196 U.S. 276, 281 this Court states: "If the taxpayer be given an opportunity to test the validity of the tax at any time before it is made final, whether the proceedings for review take place before a board having a quasi-judicial character, or before a tribunal provided by the State for the purpose of determining such questions, due process of law is not de ied." It was held by this court in *Pittsburgh & Co., Ry. Co.* v. *Backus,* 154 U.S. 421, 426, that on a tax objection hearing before judgment, with full opportunity to present the evidence and the arguments which the party deems important, is all that can be adjudged vital. To the same effect was the ruling of this Court in *Winnona and St. Peter*

Land Co. v. *Minnesota,* 159 U.S. 526, 537. These cases clearly show that even in tax matters, the taxpayer must be given the opportunity to present evidence and argument before the tax becomes final. The appellants contend that the decree can and does effectively preclude all taxpayers in the county from questioning the validity of their taxes, in contravention of the due process clause. The language of the injunction is so broad and vague that it clearly invites discriminatory enforcement. One of the issues raised in the instant case was that the County had levied taxes in excess of its actual financial needs and had thus accumulated an illegal surplus. This identical issue was raised by a tax objection filed by the Northwestern Railroad Company, a taxpayer in Lake County. That case, being case number 1600-63 in the County Court of Lake County is now pending before said court and the decree in question has not been enforced against them. In view of this fact, the appellants contend that there has also been a discriminatory enforcement of the decree denying them equal protection of the laws.

The ruling of the Illinois Supreme Court cannot even be sustained on adequate non-federal grounds and based on the opinion of this court in *Scott* v. *Donald,* 165 U.S. 58, the appellants aver that the Court has jurisdiction to examine these additional questions, for at page 71 of that case this court said; "Although the question of the jurisdiction of the court below has not been certified to us in the manner provided by the fifth section of the Judiciary Act of March 3, 1891, yet as the case is before us, in a case in which the law of the state is claimed to be in contravention of the Constitution of the United States under another clause of that statute we have jurisdiction of the entire case and of all questions involved in it. (Citations)".

The fourth question is whether or not a judgment in a prior suit wherein a suit was dismissed for failure to state a cause of action, bars a subsequent suit based upon the same set of facts in which the new complaint now states a cause of action? If the answer is in the affirmative, the appellants aver that there has then been a denial of due process of law. The Illinois Supreme Court affirmed the dismissal of the original suit on the grounds that the appellants had failed to state a cause of action. The appellants had no choice except an appeal, since the trial court refused to permit the further amendment of the complaint. The Illinois Supreme Court affirmed the decree barring the raising of any issues raised and decided in the prior case. Again, the appellants aver that the only issue in the original case was, whether or not the complaint stated a cause of action. If it did not state a cause of action, then the court correctly decided that it was without jurisdiction to hear the matter. However, it is a fundamental principle of law, that if a defective pleading can be cured, then a prior ruling that the complaint was defective does not preclude the plaintiff from filing a new complaint in which the defect has been cured. The principal is so fundamental as to warrant but few citations in support thereof: *Hansberry* v. *Lee,* 311 U.S. 32, 40; *Miller* v. *Standard Oil Co.,* 104 F. Supp. 946, 948 and *Manhattan Life Insurance Company* v. *Broughton,* 109 U.S. 121. In *Hughes* v. *United States,* 71 U.S. 232, 237, this Court said: "The petition was dismissed for want of jurisdiction and the absence of proper parties so far as it relates to the special relief sought by the suit—the vexation and surrender of the patent and it was dismissed on the grounds that it was defective, uncertain and insufficient in the statement of the cause of action. It requires no argument to show that judgment like these are no bar to the present suit. In order that

a judgment may constitute a bar to another suit, it must be rendered in a proceeding between the same parties or their privies, and the point of controversy must be the same in both cases, and must be determined on its merits. If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit (Citations)".

In the recent case of *Lathrop* v. *Donohue*, 367 U.S. 820, in which the factual situation is analogous to the case at bar, Justice Black, in a dissenting opinion said at pages 868-869: "The opinions of the Wisconsin courts in this case indicates that the laws of the state—as do the laws in most civilized jurisdictions—permit amendments and clarifications of complaints where defects exist in the original complaint which can be cured. And even if Wisconsin laws were to the contrary, it is settled by the decisions of this Court that a federal right cannot be defeated merely on the ground that the original complaint contained a variable defect (*Brown* v. *Western Ry. of Alabama*, 338 U.S. 294)". The appellants therefore aver that the ruling of the trial court in holding that a judgment in a prior suit which had been dismissed a suit for lack of jurisdiction barred a subsequent suit, has denied the appellants due process of law. In *Saunders* v. *Shaw*, 244 U.S. 317, 320 this court states: "The denial of the right given by the Fourteenth Amendment need not be by legislation," and cite the *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U.S. 278. In the latter case, at page 286, this Court said: "To the contrary, the provisions of the Fourteenth Amendment as conclusively fixed by previous decisions are generis in their terms, are addressed,

of course, to the State but also to every person whether natural or judicial who is repository of state power". Thus, the appellants that even the judiciary is subject to the limitations set forth in the Fourteenth Amendment. Further, in *Hansberry* v. *Lee*, 311 U.S. 32, the appellant therein alleged that the application of the doctrine of *res judicata* to a representative suit had denied him due process of law. At page 40 this court said: "State courts are free to attach such descriptive labels to litigation before them as they may choose and to attribute to them such consequences as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. But when the judgment of a state court, ascribing to the judgment of another court the full force and effect of *res judicata*, is challenged for want of due process, it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the constitution prescribes. *Western Life Indemnity Co.* v. *Rupp*, 235, U.S. 261, 273".

The appellants are thus asking that this Honorable Court examine the complaint and Supplemental complaint herein to determine whether or not they have stated a cause of action. It is for this reason that the pleadings are set forth in the Appendix at pages 65a to 102a.

The fifth question appears at the outset to be a matter of semantics. There is a growing practice which is prevelant throughout the judicial systems of the several states, to have a public official, *e.g.* the Attorney General, the States' Attorney, etc., file a "friendly" or "dummy" suit to test the "constitutionality" of a new statute of im-

portance. Such suits seem to attempt to create a blanket of constitutionality under which the statute may be forever hidden from the searching eyes of the law. *Adamowski* v. *Public Building Commission,* II Ill. 2d 125 was such a case.

In the instant case, the Illinois Supreme Court ruled that the constitutionality of the statute under consideration here had been upheld in the *Adamowski* case and "need not be further considered". A careful reading of the case as reported in II Ill. 2d, 125 (142 N.E. 2d 67) reveals that the court held that the statute authorizing the public building commissions to lease buildings acquired and constructed by them to municipal corporations for any period of time not to exceed forty years, creates a present debit for the aggregate of all rentals for term of lease and violates constitutional requirement that principal of debt by municipal corporations be paid in twenty years. (Ill. Const. Art. 9 Sec. 12). The statute still provides for forty year lease in contravention of the Illinois Constitution. A further analysis of the *Adamowski* case reveals that the constitutional questions raised and decided in the *Adamowski* case are not identical to the ones set forth in the complaint and supplemental complaint herein. Does a prior judgment of a court in which some element of the constitutionality of the state statute had been upheld bar a subsequent suit in a justiciable controversy, between different parties, in a different proceeding and upon different points of constitutional controversy? The appellants contend the answer is in the negative. The decision of this Court in *Hughes* v. *United States,* 71 U.S. 232, 237 alluded to under the fourth question would also be applicable to this question, *a fortiori,* since a comparison of *Adamowski* case and the instant case reveal that the proceedings were not between the same parties and

that the points of controversy were not the same. As a matter of fact, the statute in question has been amended several times since the decision in the *Adamowski* case and one portion (Para. 3314.1 at App., 20a-23a), was adopted in 1961 and was not even in existence at the time of the *Adamowski* case which was a 1957 decision. Thus, the appellants aver that the assertion that the prior judgment in the *Adamowski* case in which some element of the constitutionality of the state statute was upheld barred a subsequent suit in a different proceeding, between different parties upon different points of constitutional controversy, denied the appellants the protection of the due process and equal protection clauses of the Federal Constitution.

Finally, the appellants urge that the following issues are so substantial as to require plenary consideration or that the following are additional grounds or reasons for granting the writ:

(1) The decision herein directly affects several hundreds of thousands of taxpayers in Lake County, Illinois, and the statute, if upheld, will also affect millions of taxpayers throughout the State of Illinois.

(2) The rapid growth of the use of "dummy" or "friendly" suits to determine the constitutionality of a statute so as to preclude subsequent attacks upon the constitutionality of the Act upon other and different grounds or upon a different factual situation is a subtle erosion of fundamental legal principle.

(3) The result reached below will result in undue hardships on the hundreds of thousands of taxpayers in Lake County.

(4) The decision is not in accord with the applicable decisions of this court and is contrary to the

basic fundamentals of jurisprudence established by the great mass of case law.

(5) The record on appeal is totally devoid of any evidentiary support so as to render the decision unconstitutional under the due process clause of the Fourteenth Amendment.

(6) The question presented is of major importance because of its potential applicability to every taxpayer who seeks to file a tax objection pursuant to the Illinois Statutes.

(7) The error of the lower court represents a gross miscarriage of justice.

(8) The broad terms of the injunction are unduly harsh in its impact on the taxpayers, since to file a tax objection, a taxpayer must run the risk of being held in contempt of court for violating the injunction.

By way of a summation, the appellants aver that a Federal Constitutional question has been properly raised in the lower court by the pleadings; that the validity of a statute has been drawn into question as being repugnant to the Federal Constitution; that the Illinois Supreme Court upheld the validity of the statute in question; that the issuance of a permanent injunction without a hearing or opportunity to be heard violates every basic principal underlying the judicial system of these United States; that the issuance and discriminatory enforcement of the broad and indefinite terms of the injunction has and will deny the taxpayers due process of law; that the prior dismissal of litigation for failure to state a cause of action does not preclude a subsequent action where the defect has been curred; and finally that the prior ruling of a court in which some phase of the constitutionality of a particular statute has been ruled upon does not pre-

clude a subsequent action, raising different points of constitutional controversy or from testing the constitutionality of subsequent amendments to the particular statute. It is not easy to contemplate constitutional issues more basic or fundamental than those raised in this appeal. Their determination, one way or the other, will have a definitive, far reaching and long enduring impact for generations to come.

CONCLUSION.

For the reasons set forth above, this Court has jurisdiction of the appeal and the questions herein are so substantial and of such a compelling public importance so as to be accorded plenary consideration with briefs on the merits and oral argument for their resolution; that some of the questions can be resolved by a reversal of the decree below so as to vacate the decree and remand the case for further proceedings on the case now pending before the trial court; that the court should adjudicate that the statute is unconstitutional and should reverse the final decree after briefs and oral argument or in the alternative, that this Court should treat this document as a petition for a writ of Certiorari and should grant this petition for a Writ of Certiorari.

Respectfully submitted,

PAUL E. HAMER
Counsel for Plaintiffs-Appellants

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APPENDIX A.

PUBLIC BUILDING COMMISSION

3301. Citation of Act

This Act shall be known and may be cited as the Public Building Commission Act. 1955, July 5, Laws 1955, p. 905, ¶ 1.

3302. Finding and declaration of legislature

It is hereby found and declared that there exist in many county seats within this State inadequate and outmoded public buildings and facilities in use in the conduct of local government by the various branches, departments and agencies thereof; that in many cases, by reason of the age of such public buildings and the increased activities on the part of both the citizen and his local government, they are no longer adapted or adequate to meet the needs of the growing population; that as a consequence thereof there are many counties, cities, and other branches and agencies of government within this State which are compelled to spend large sums of money annually in the rental, operation and maintenance of additional building space to house the various branches, departments and agencies of government to meet this ever increasing need; that as a result thereof, in many of the cities, counties, and other municipalities within this State, the public buildings housing the various branches, departments, and agencies of government are widely scattered throughout the locality, thereby creating confusion and considerable waste of time and effort on the part of citizens conducting ordinary business with the various branches and agencies

of government and thereby creating reduced efficiency of operation in the necessary intergovernmental activities of the various branches and agencies of government; that many public records, wills, conveyances, vital statistics, court decrees, and other similar documents in use in the conduct of daily business, are now filed in many poorly protected and overcrowded spaces and at widely separated locations by reason of the lack of an adequate public building or buildings; that these conditions impair the efficient, economical and indispensable governmental functions of the various branches and agencies of government and that, in order to eradicate these conditions, it is hereby found and declared to be necessary and desirable to make possible the construction, acquisition, or enlargement of buildings to be made available for use by governmental agencies with the intent and purpose of centralizing, insofar as is practicable, the activities of the different branches of government; and that the eradication of these conditions and the construction, acquisition or enlargement of such public building or buildings, in the manner hereinafter provided in this Act, is hereby declared to be a public use essential to the public interest. 1955, July 5, Laws 1955, p.905 ¶ 2.

3303. Definitions

The following terms, wherever used, or referred to in this Act, shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Commission" means a Public Building Commission created pursuant to this Act.

(b) "Commissioner" or "Commissioners" shall mean a Commissioner or Commissioners of a Public Building Commission.

(c) "County seat" means a city, village or town which is the county seat of a county.

(d) "Municipal corporation" includes a county, city, village, town, (including a county seat), park district, school district, board of education, sanitary district, and any other municipal body or governmental agency of the State.

(e) "Governing body" shall include a city council, county board, or any other body or board, by whatever name it may be known, charged with the governing of a municipal corporation.

(f) "Presiding officer" shall include the mayor or president of a city, village or town, the presiding officer of a county board, or the presiding officer of any other board or commission, as the case may be.

(g) "Oath" shall mean oath or affirmation. 1955, July 5, Laws 1955, p.905, ¶ 3.

3304. Resolution of governing body of county seat—Necessity of commission—Name—Publication of resolution—Filing

The governing body of any county seat or the county board of any county may, by resolution adopted by a majority of its members, determine that there is need and that it is in the best interest of the public that a Public Building Commission be organized to exercise the powers and authority prescribed by this Act and it shall therein set forth the name of the Public Building Commission be created hereunder, provided, however, that the words "Public Building Commission" shall form part of its name. The presiding officer of the county seat or county board adopting the resolution shall, within 10 days after

the date of adoption, cause a copy of the resolution to be published once in a daily newspaper published in the county seat and if there be no newspaper published in that county seat, then in a newspaper published in the county having a circulation in that county seat. Any municipal corporation which has the power of taxation under the laws of this State and any part of whose area of jurisdiction lies within the territorial limits of that county seat may join in the organization of the Public Building Commission in the manner hereinafter set forth in this section. The governing body of any municipal corporation meeting the foregoing requirement and desiring to join in the organization of the Public Building Commission, shall, by a majority vote of its members and within 45 days from the date of such publication, adopt a resolution to that effect. The presiding officer of each municipal corporation adopting such a resolution signifying its desire to join in the organization of the Public Building Commission, shall, within 15 days after the date of adoption thereof, transmit a copy of the resolution duly certified by the proper officer of that municipal corporation to be true and correct, to the presiding officer of the county seat or county board adopting the original resolution.

Within the 10 day period following the expiration of 60 days after the date of publication of the original resolution, it shall be the duty of the presiding officer of the county seat or county board adopting the original resolution to file in the office of the Recorder of Deeds in and for that county under one cover a certified copy of the resolution adopted by such county seat or county board together with a certificate by the publisher of the newspaper of the publication of said resolution and the date of publication and all of the certified copies transmitted to him as hereinabove provided by the municipal corpo-

rations, if any, joining in the organization of the Public Building Commission.

Upon such filing in the office of the Recorder of Deeds the Public Building Commission shall be deemed to be organized as a municipal corporation and body politic.

There shall not be more than 1 Public Building Commission in any county. 1955, July 5, Laws 1955, p. 905, ¶4; 1957, May 16, Laws 1957, P. 178 ¶1.

3305. Commissioners—Appointment—Certificate of appointment—Number of Terms of office—Vacancies

Within 30 days after the filing of the office of the Recorder of Deeds of the resolution or resolutions organizing the Public Building Commission, the presiding officer of the county seat or county board adopting the original resolution and the presiding officers of the municipal corporations, if any, joining in the organization of the Public Building Commission shall appoint Commissioners in the manner hereinafter provided. All appointments shall be made with the advice and consent of the governing body of the municipal corporation whose presiding officer makes the appointment.

Within 10 days after the appointment of the commissioners by the respective presiding officers, with the advice and consent of the respective governing bodies, as aforesaid, each of such presiding officers shall transmit to the presiding officer of the county seat or county board which adopted the original resolution, a certificate of such appointment. The presiding officer of the county seat or county board shall cause all such certificates of appointment, including a certificate of the appointments made by the presiding officer of the county seat or county board which adopted the original resolution, to be bound

under one cover and filed in the office of the Recorder of Deeds in and for said county. Upon such filing, the persons so appointed shall constitute the Board of Commissioners of the Public Building Commission and upon taking the oath of office as hereinafter provided shall be deemed to have qualified and be empowered to exercise the powers and authority prescribed in this Act.

The Board of Commissioners shall in all cases consist of not less than 5 members and in such instances as there may be more than 5 members as herein provided, the Board of Commissioners shall consist of an odd number.

If the county seat alone organizes the Public Building Commission, the presiding officer of the county seat shall appoint 5 Commissioners.

If the county board alone organizes the Public Building Commission, the presiding officer of the county board shall appoint 5 Commissioners.

If any one municipal corporation shall join with the county seat or county board in the organization of the Public Building Commission then and such event the presiding officer of the county seat or county board adopting the original resolution shall appoint 3 Commissioners and the presiding officer of the municipal corporation joining in the organization of the Public Building Commission shall appoint 2 Commissioners.

If two or more municipal corporations, in addition to the county seat or county board adopting the original resolution, shall join with the county seat or county board in the organization of the Public Building Commission then and in such event the presiding officers of the municipal corporations joining in organization shall each appoint 1 Commissioner and the presiding officer of

the county seat or county board adopting the original resolution shall appoint such number of commissioners as shall exceed by one the aggregate number appointed by the presiding officers of the municipal corporations joining in the organization of the Commission.

The initial terms of such Commissioners shall be for 5, 4, 3, 2 and 1 year, respectively, and in such cases as there may be more than 5 Commissioners the initial terms of Commissioners in excess of 5 Commissioners shall be on a descending scale of 5, 4, 3, 2 and 1 years, as there are Commissioners in excess of 5. The length of the terms of the first Commissioners shall be determined by lot at their first meeting. The initial terms of office of Commissioners who are to hold office for terms of 1, 2, 3, 4 and 5 years, respectively, shall continue until that September 30th which next follows the expiration of the periods of 1, 2, 3, 4 and 5 years, respectively from the date of the filing of the certificates of appointment in the office of the Recorder of Deeds, as aforesaid, and until their successors are appointed and qualify by taking their oath of office.

At the expiration of the term of each of the Commissioners, and of each succeeding Commissioner, or in the event of a vacancy, resignation, removal or refusal to act, the presiding officer of the municipal corporation, who made that Commissioner's appointment in the first instance, shall appoint a Commissioner, in the manner hereinabove provided, to hold office, in the case of a vacancy occurring for whatever reason, for the unexpired term, or in the case of expiration, for a term of 5 years, and until his successor is appointed and has qualified. Each such appointment shall become effective upon the filing by the presiding officer making the appointment of a certificate of the appointment in the office of the Recorder of Deeds for that county. Any Commissioner may be appointed to succeed himself.

1955, July 5, Laws 1955, p. 905, ¶5; 1957, May 16, Laws 1957, p. 178, ¶1.

3306. Oath—Qualifications of commissioners—Interest in contracts—Disclosure

Each person appointed as a member of the Board of Commissioners shall qualify by taking and subscribing to an oath to uphold the Constitution of the United States and of the State of Illinois and to well and faithfully discharge his duties, which oath shall be filed with the Secretary of the Commission.

Commissioners shall be persons experienced in real estate management, building construction or finance. The fact that a person is an officer or employee of any municipal corporation, including the county seat, or county board or any other municipal corporation which joined in the organization of the Commission, shall not disqualify that person from being a Commissioner of a Public Building Commission. No person who is appointed as a Commissioner of a Public Building Commission shall have a financial interest in the creation of or in the continued existence of the Public Building Commission. No Commissioner shall acquire any interest, direct or indirect, in any contract or proposed contract of the Public Building Commission, or in any land, building or buildings, or other property or facilities in which the Public Building Commission has taken an interest. If any Commissioner at any time holds or controls an interest, direct or indirect, in any property which the Public Building Commission is about to acquire, he shall disclose the same in writing to the Commission and such disclosure shall be entered upon the minutes of the Board of Commissioners. 1955, July 5, Laws 1955, p. 905, ¶6; 1957, May 16, Laws 1957, p. 178, ¶1.

3307. Compensation of commissioners—Reimbursement for expenditures

No Commissioner shall receive any compensation, whether in form of salary, per diem allowance or otherwise, for or in connection with his services as such Commissioner. Each Commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of his duties. 1955, July 5, Laws 1955, p. 905, ¶7.

3308. Board of commissioners—Government, control and management of affairs of commission—Powers—Meetings—Notice—Officers of commission

The Commissioners appointed in pursuance of the foregoing provisions of this Act shall constitute the Board of Commissioners of the Public Building Commission. The government, control and management of the affairs of the Public Building Commission shall possess and exercise all of the powers granted under this Act and such other powers, not inconsistent with this Act, as may be necessary to effectuate the purposes of this Act.

The presiding officer of the county seat or county board by adopting the original organization resolution shall call the first meeting of the Board of Commissioners. He shall give notice in writing to each member of the Board of the time and place of the meeting not less than 5 days prior to the meeting and shall preside over the meeting until the members have elected a Chairman. The members, at the initial meeting, shall first draw lots to determine their terms of office which shall be entered of record in the proceedings of the Board.

The Board of Commissioners at the initial meeting shall elect one of their members as chairman. At such meeting or

at a later meeting, the Board shall elect or appoint a secretary and treasurer and such other officers as they may deem necessary for such terms as they may decide upon. The secretary and treasurer need not be commissioners, and if such officers are not commissioners, they shall receive compensation in such amount as shall be determined by the Board. At such meeting, or at a later meeting, the Commissioners shall adopt a corporate seal, by-laws, and rules and regulations suitable to the purposes of this Act, which shall provide a time for the election of officers and of other regular and special meetings of the Commissioners, and shall contain the rules for the transaction of other business of such Public Building Commission and for amending such by-laws, rules and regulations.

Said Board of Commissioners shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of said Board of Commissioners and of said Public Building Commission and for carrying into effect the object for which such Public Building Commission is created. 1955, July 5, Laws 1955, p. 905, ¶8; 1957, May 16, Laws 1957, p. 178, ¶1.

3309. Quorum—Records—Public inspection

A majority of the Board of Commissioners shall constitute a quorum for the transaction of the business thereof. The concurring vote of a majority of all the Commissioners shall be required for the exercise of any of the powers granted by this Act. All records of the Commission shall be open to public inspection at all reasonable hours. 1955, July 5, Laws 1955, p. 905, ¶9.

3310. Records—Provision for safekeeping—Minutes—Receipts and disbursements—Annual audit—Bond

A Public Building Commission shall provide for the proper safekeeping of its records, subject to the provisions

of "The Local Records Act," enacted by the Seventy-second General Assembly, and shall keep a minute book for the recording of the corporate action of the Board of Commissioners. A complete record of the meetings and proceedings of the Board of Commissioners shall be kept in such minute book and such minutes shall be signed by the Secretary of the Public Building Commission. The Commission shall keep a true and accurate account of its receipts and disbursements and an annual audit shall be made of its books, records and accounts. All officers and employees authorized to receive or retain the custody of money or to sign vouchers, checks, warrants, or evidences of indebtedness on behalf of the Commission, shall furnish surety bond for the faithful performance of their duties and the faithful accounting of all monies that may come into their hands, in an amount to be fixed and in a form to be approved by the Board of Commissioners. As amended 1961, Aug. 18, Laws 1961, p. 3487, ¶1.

3311. Treasurer—Custodian of funds and revenues—Depositories—Designation and qualification

The Treasurer of a Public Building Commission shall be the legal custodian of all funds derived from the issuance of bonds provided for under this Act and of all revenues derived from the operation of any project under this Act and of all other revenues from whatever source received. The Treasurer shall keep all funds and monies belonging to the Public Building Commission in such places of deposit as may be designated by resolution of the Board of Commissioners, provided, however, that only a regularly organized State or National Bank may be designated as a depository. When a bank has been designated as a depository it shall continue as such despository until ten (10) days have elapsed after a new depository is designated and

has qualified by furnishing the statements of resources and liabilities as required by this section. When a new depository is designated, the Board of Commissioners shall notify the surety of the Treasurer of that fact, in writing, at least five (5) days before the transfer of funds. The Treasurer shall be discharged from responsibility for all funds or money which he deposits in a designated bank while the funds and money are so deposited, provided the Treasurer shall not be discharged from the responsibility for any funds or money deposited in a bank if the amount of such deposits exceed seventy-five per cent (75%) of the capital stock and surplus of the bank.

No bank shall be qualified to be designated a depository for monies of a Public Building Commission until it has furnished the Public Building Commission with copies of the last two sworn statements of resources and liabilities which the bank is required to furnish to the auditor of public accounts of this State or to the comptroller of currency. Each bank designated as a depository for such monies, while acting as such depository, shall furnish the Board of Commissioners of the Public Building Commission with a copy of all statements of resources and liabilities which it is required to furnish to said auditor of public accounts or to the comptroller of currency. 1955, July 5, Laws 1955, p. 905, ¶11.

3312. Employment of technical, professional, and clerical assistants—Compensation—Loan of employees by municipal corporations—Office space

The Board of Commissioners may employ such technical, professional, and clerical assistants as are necessary and expedient for the proper performance of its duties and for the accomplishment of the objects and purposes of the Commission. The salaries, fees, or other compensation of any

such employee shall be fixed and determined by the Board of Commissioners.

For the purpose of aiding and cooperating with a Public Building Commission, the municipal corporations participating it its organization may assign or loan any of their employees, whether under Civil Service or not, to the Public Building Commission to aid in the performance of any of the work of the Public Building Commission, and may provide necessary office space, equipment or other facilities for the Public Building Commission.

Any such employees so assigned or loaned who are member or beneficiaries of any existing pension or retirement system or who have been appointed to positions in the service of such participating municipal corporations under rules and classifications of any Civil Service Commission shall have the same status with respect thereto after assignment to the Public Building Commission.

To facilitate the Public Building Commission in aid of any project undertaken by it any municipal corporation joining in its organization may make available to the Public Building Commission the services of its engineering staff and facilities. 1955, July 5, Laws 1955, P. 905, ¶12.

3313. Donations of property—Cash grants to commission

This Act being designed to effect a public use and purpose, the corporate authorities of the municipal corporation or corporations creating the Public Building Commission and the corporate authorities of any other municipal corporations which may be desirous of renting space in any building or buildings to be acquired or constructed by such Public Building Commission, may make donations of property, real or personal, or cash grants to the Public Building Commission in such amount or amounts as they may deem proper and appropriate in aiding the Public Building Commission to effectuate the purpose for its creation. 1955, July 5, Laws 1955, p. 905, ¶13.

3314. Status of commission—Actions by or against—Seal —Perpetual succession Powers

A Public Building Commission shall be a municipal corporation and shall constitute a body corporate and politic separate and apart from any other municipal corporation, or any other public or governmental agency. It may sue and be sued, plead and be impleaded, and have a seal and alter the same at pleasure, have perpetual succession, make and execute contracts, leases, deeds and other instruments necessary or convenient to the exercise of its powers, and make and from time to time amend and repeal its by-laws, rules and regulations not inconsistent with this Act. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary, to carry out and effectuate such express powers:

(a) To select, locate and designate one or more areas lying wholly within the territorial limits of the county seat of the county in which the Commission is organized as the site or sites to be acquired for the erection, alteration or improvement of a building or buildings for the purposes hereinafter set forth. The site or sites selected shall be conveniently located within such county seat and of an area in size sufficiently large to accomplish and effectuate the purpose of this Act and sufficient to provide for proper architectural setting and adequate landscaping for such building or buildings.

(1) Where the governing body of the county seat has adopted the original resolution for the creation of the Commission the site or sites selected shall be subject to approval by a majority of the members of the governing body of the county seat.

(2) Where the original resolution for the creation of the Commission has been adopted by the governing body of the county, the site or sites selected by the Commission shall be subject to approval by a majority of the members of the governing body of the county and to approval by three-fourths of the members of the governing body of the county seat; and, if such site or sites so selected shall not be approved by three-fourths of the members of the governing body of the county seat the Commission may by resolution request that the approval of the site or sites so selected be submitted to a referendum at the next general county election, and shall present such resolution to the county clerk. Upon receipt of such resolution the county clerk shall immediately notify the board of election commissioners, if any; the county clerk or board of election commissioners, or both, shall give notice that at the next general county election, every elector may vote upon the proposition stated in the resolution and the clerk or board of election commissioners shall give such notice in the next legal notice of a general election in the county and provision shall be made by the county clerk or board of election commissioners for voting upon the proposition in accordance with the notice; provided however that elections pursuant to resolution shall not be called more frequently than once in 4 years. The ballot upon the proposition shall be substantially the following form:

Shall ..... be acquired for the erection, alteration or improvement of a building or building pursuant to the Public Building Commission Act, approved July 5, 1955, which project it is estimated will cost $....., including the cost of the site acquisition and for the payment of which revenue bonds in the amount of $....., maturing ..... and bearing interest at the rate of .....% per annum, may be issued?	YES NO

If a majority of the electors vote in favor of the proposition, the site or sites so selected shall be approved. Except where approval of the site or sites has been obtained by referendum, the area or areas may be enlarged by the Board of Commissioners, from time to time, as the need therefor arises. The selection, location and designation of more than one area may, but need not, be made at one time, but may be made from time to time.

(b) To acquire the fee simple title to the real property located within such area or areas, including easements and reversionary interests in the streets, alleys and other public places and personal property required for its purposes, by purchase, gift, devise, or by the exercise of the power of eminent domain, and title thereto shall be taken in the corporate name of the Commission. Eminent domain proceedings shall be in all respects in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as heretofore or hereafter amended. All land and appurtenances thereto, acquired or owned by the Commission are to be deemed acquired or owned for a public use or public purpose.

Any municipal corporation which organized or joined in the organization of the Commission and which owns fee

simple title to real property located within such an area, may convey such real property, or any part thereof, to the Commission with a provision in such conveyance for the reverter of such real property to the transferor municipal corporation at such time as all revenue bonds and other obligations of the Commission incident to the real property so conveyed, have been paid in full, and such Commission is hereby authorized to accept such a conveyance.

(c) To demolish, repair, alter or improve any building or buildings within the area or areas and to erect a new building or buildings and other facilities within the area or areas. To furnish and equip the same, and maintain and operate such building or buildings and other facilities so as to effectuate the purposes of this Act.

(d) To pave and improve streets within such area or areas, to construct, repair and install sidewalk, sewers, waterpipes and other similar facilities and site improvements within such area or areas and to provide for adequate landscaping essential to the preparation of such site or sites in accordance with the purposes of this Act.

(e) To make provisions for offstreet parking facilities.

(f) To operate, maintain, manage and to make and enter into contracts for the operation, maintenance and management of such buildings and other facilities and to provide rules and regulations for the operation, maintenance and management thereof.

(g) To employ and discharge without regard to any Civil Services Act, engineering, architectural, construction, legal and financial experts and such other employees as may be necessary in its judgment to carry out the purposes of this Act and to fix compensation for such employees, and enter into contracts for the employment of any person,

firm, or corporation, and for professional services necessary or desirable for the accomplishment of the objects and purposes of the Commission and the proper administration, management, protection and control of its property.

(h) To rent all or any part or parts of such building, buildings or other facilities to any municipal corporation which organized or joined in the organization of the Public Building Commission or to any branch, department or agency thereof, or to any branch, department or agency of the State or Federal government, or to any other municipal corporation, quasi municipal corporation, political subdivision or body politic, or agency thereof, doing business, maintaining an office or rendering a public service in such county seat or county for any period of time, not to exceed 20 years.

(i) To rent such space in such building or buildings as from time to time may not be needed by any governmental agency for such other purposes as the Board of Commissioners may determine will best serve the comfort and convenience of the occupants of such building or buildings, and upon such terms and in such manner as the Board of Commissioners may determine.

(j) To execute written leases evidencing the rental agreements authorized in Clauses (h) and (i) of this section.

(k) To procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the Public Commission in the performance of the duties of his office or employment or any other insurable risk, as the

Board of Commissioners in its discretion may deem necessary.

(l) To accept donations, contributions, capital grants or gifts from any individuals, associations, municipal and private corporations and the United States of America, or any agency or instrumentality thereof, for or in aid of any of the purposes of this Act and to enter into agreements in connection therewith.

(m) To borrow money from time to time and in evidence thereof to issue and sell revenue bonds in such amount or amounts as the Board of Commissioners may determine to provide funds for the purpose of acquiring, erecting, demolishing, improving, altering, equipping, repairing, maintaining and operating buildings and other facilities and to acquire sites necessary and convenient therefor and to pay all costs and expenses incident thereto, including, but without in any way limiting the generality of the foregoing, architectural, engineering, legal and financing expense, which may include an amount sufficient to meet the interest charges on such revenue bonds during such period or periods as may elapse prior to the time when the project or projects may become revenue producing and for one year in addition thereto; and to refund and refinance, from time to time, revenue bonds so issued and sold, as often as they may be deemed to be advantageous by the Board of Commissioners.

(n) To enter into any agreement or contract with any Lessee, who, pursuant to the terms of this Act, is renting or is about to rent from the Commission all or part of any building or buildings or facilities, whereby under such agreement or contract said Lessee obligates itself to pay all or part of the cost of maintaining and operating the premises so leased. Such agreement may be included as a provision of any Lease entered into pursuant to the terms

of this Act or may be made the subject of a separate agreement or contract between the Commission and such Lessee. As amended 1961, Aug. 4, Laws 1961, p. 2772, ¶1.

3314.1 Interim notes—Issuance—Registration—Payment —Covenants

In addition to the permanent financing authorized by Sections 14 and 15 of this Act, the Board of Commissioners of any public building commission may borrow money and issue interim notes in evidence thereof, in the manner following:

(a) Whenever any area or site has been selected, located, designated and approved, as provided by Section 14 of this Act, and it is deemed advisable and in the interests of the Commission to borrow funds temporarily for the acquisition of the area or site in advance of permanent financing, the Board of Commissioners may from time to time and pursuant to appropriate resolution, issue interim notes to evidence borrowings for the purpose of obtaining funds with which to acquire the area or site selected and approved for the erection, alteration or improvement of a building or buildings to be located thereon for the purposes provided for by this act, including funds for payment of interest on such borrowings and funds for all necessary and incidental expenses in connection with said area or site until the date of the permanent financing. Any resolution authorizing the issuance of said notes shall describe the area or site to be acquired and shall specify the principal amount, rate of interest (not exceeding six per cent per annum) and maturity date which shall be the same for all interim notes but not to exceed five years from date of issue of the first of said notes so issued, and such other terms as may be specified in said resolution; provided, however, that time of payment of any such notes may be extended for a period of not exceeding two years from the maturity date thereof.

The Board of Commissioners may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the Board may determine by the resolution authorizing their issue. The notes shall be issued from time to time by the Board of Commissioners as funds are borrowed, in the manner the Board of Commissioners may determine. Interest on the notes may be made payable semiannually or at maturity. The notes may be made redeemable, prior to maturity, at the option of the Commission, in the manner and upon the terms fixed by the resolution authorizing their issuance. The notes may be executed in the name of the Commission by the Chairman of the Board of Commissioners or by any other officer or officers of the Commission as the Board by resolution may direct, shall be attested by the Secretary or such other officer or officers of the Commission as the Board may by resolution direct, and be sealed with the Commission's corporate seal. All said notes and the interest thereon may be secured by a pledge of any income and revenue derived by the Commission from the property to be acquired with the proceeds of the notes, after deducting from such income and revenue any reasonable and necessary maintenance and operation expenses, and shall be payable solely from said income and revenue and from the proceeds to be derived from the sale of any revenue bonds for permanent financing authorized to be issued under Sections 14 and 15 of this Act, and from the property acquired with the proceeds of the notes.

Contemporaneously with the issue, as provided by this Act, of revenue bonds all interim notes, even though they may not then have matured, shall be paid, both principal and interest to date of payment, from the funds derived from the sale of revenue bonds for the permanent financ-

ing and such interim notes shall be surrendered and canceled.

(b) The Commission, in order further to secure the payment of the interim notes, is, in addition to the foregoing, authorized and empowered to do the following:

1. Pledge or mortgage all or any part of the property to be acquired with the proceeds of the interim notes, or provide otherwise for the sale, public or private and with or without notice, of all or any part of the property, in the event of default in payment of principal of or interest on the interim notes or on any covenant or agreement of the Commission in connection with the interim notes, and in the event of any such default to permit the acceleration of the maturity of the interim notes. Except with respect to the finds derived from revenue bonds, as hereinabove provided, no pledge, mortgage or provision for the sale of any property shall relate to any property, other than the property to be acquired with the proceeds of any and all said interim notes, and any net income and revenue derived from the property.

2. Covenant against pledging or mortgaging or otherwise disposing of all or any part of or interest in the property to be acquired with proceeds of the interim notes, or any net income derived from the property; and against permitting or suffering any lien on the property or said net income; and against any borrowings or incurring liabilities in addition to the borrowings and liabilities, evidenced by the interim notes, prior to the issuance of revenue bonds; and against the issue of interim notes in excess of a specified principal amount; and against preference of any interim note over any other interim note as to payment of interest or principal; and against making any substitutions for or additions or improvements to said property except with the proceeds derived from borrowings evi-

denced by any and all said interim notes, or with the net income derived from said property.

3. Make any other or additional covenants, terms and conditions not inconsistent with the provisions of subparagraph (a) of this Section, and do any and all acts and things as may be necessary or convenient or desirable in order to secure payment of its interim notes, or, in the discretion of the Commission, as will tend to make the interim notes more acceptable to lenders, notwithstanding that the covenants, acts or things may not be enumerated herein; provided, however, that nothing contained in this subparagraph shall authorize the Commission to secure the payment of the interim notes out of property, other than the property acquired with the proceeds of the interim notes, and any net income and revenue derived from the property and the proceeds of revenue bonds as hereinabove provided.

(c) The interim notes shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

(d) No member, officer, agent or employee of the Commission, nor any other person who executes interim notes, shall be liable personally thereon by reason of the issuance thereof. 1955, July 5, Laws 1955, p. 905, ¶14.1, added 1961, Aug. 4, Laws 1961, p. 2770, ¶1.

3314.2 Exercise of powers in municipal corporations not county seat

The powers of a Public Building Commission granted in Section 14 may also be exercised in any municipal corporation not the county seat in the same manner, as near as may be, as provided in this Act. 1955, July 5, Laws 1955 p. 905, ¶14.2, added 1963, p. 2126, ¶1.

3315. Resolution—Contents—Bonds—Denominations—Maturity—Registration—Interest Rate—Execution of bonds—Coupons—Refunding bonds—Sinking fund

Whenever and as often as the Board of Commissioners determines to issue bonds as provided in this Act, it shall adopt a resolution describing the area to be acquired, the nature of the improvements thereon, the disposition to be made of such improvements and a description of any new buildings or other facilities to be constructed thereon. Such description shall not prohibit the Board of Commissioners from making such minor changes as may be necessary or convenient in the discretion of the Board of Commissioners.

The resolution shall set out the estimated cost of the project, including the cost of acquiring the site therefor, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions and all other details in connection with such bonds. The Board shall determine and fix the rate of interest of any revenue bonds issued hereunder, in such resolution or in any supplemental resolution adopted by the Board prior to the issuance thereof. The resolution, trust agreement or other contract entered into with the bondholders may contain such revenue bonds thereafter as may be deemed necessary or advisable for the issuance of the payment of the bonds thereby authorized.

All bonds shall be issued in the name of the Public Building Commission and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of this State.

Bonds issued under this Act, whether original issue or issues or refunding, may be issued as serial or term bonds,

shall be of such denomination or denominations and form, including interest coupons to be attached thereto, shall be payable at such place or places and bear such date as the Board of Commissioners shall fix by the resolution authorizing such bonds and shall mature within a period not to exceed forty (40) years, and may be redeemable prior to maturity with or without premium, at the option of the Board of Commissioners, upon such terms and conditions as the Board of Commissioners shall fix by the resolution authorizing the issuance of such bonds. The Board of Commissioners may provide for the registration of such bonds in the name of the owner as to the principal alone or as to both principal and interest upon such terms and conditions as the Board of Commissioners may determine. All bonds issued hereunder by any Public Building Commission shall be sold at such price that the interest cost to the Commission of the proceeds of such bonds shall not exceed six percent (6%) per annum, payable semi-annually, computed to maturity and shall be sold in such manner and at such time or times as the Board of Commissioners shall determine.

Bonds issued by a Public Building Commission, and the interest thereon, shall be payable solely from the revenues derived from the operation, management or use of the buildings or other facilities acquired or to be acquired by the Commission, which revenues shall include payment received under any leases or other contracts for the use of the facilities, buildings or space therein. All bonds shall recite in the body thereof that the principal and interest thereon are payable solely from the revenues pledged to pay the same and shall state on their face that it is not an indebtedness of the Commission or a claim against the property of such Commission.

The bonds shall be executed in the name of the Commission by the Chairman of the Board of Commissioners or by